

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANTS AND JOINT APPENDIX

IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA

UNITED STATES

COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

No. 8897

280

FILED DEC 21 1944

SACKETT, CHAPMAN, BROWN & CROSS, and
ALBERT W. SANSON, *Appellants*,

James W. Stewart
CLERK

v.

JAMES W. OSGOOD, Ancillary Administrator c.t.a.,
Estate of Rose O. Brillhart, deceased, Administration
No. 60924, *Appellee*.

Appeal from the District Court of the United States
For the District of Columbia, Holding a Probate Court

JOSEPH A. CANTREL,
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Washington 5, D. C.,
Attorney for Appellants.

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District of Columbia, Holding a Probate Court, from the Order of Court therein filed on July 6, 1944. (App. p. 12.) Notices of appeal herein were duly filed on October 5, 1944 (App. pp. 13 and 14), and deposit for costs was duly made herein on November 15, 1944.

Jurisdiction of this Court is derived from the District of Columbia Code (1940 Edition), Sec. 17-101. (41 Stat. 1312.)

STATEMENT OF THE CASE.

Rose O. Brillhart died August 16, 1941. (App. p. 9.) She was a resident of the State of New York, and her will was admitted to probate and record there, and domiciliary administration was taken out on her estate there, when on February 10, 1942, James W. Osgood was appointed and qualified as administrator c.t.a. of her estate. (App. p. 2.) Decedent owned property, both real and personal, in the District of Columbia. (App. p. 3.) On June 17, 1942, Sackett, Chapman, Brown & Cross, of the City and State of New York, one of the appellants herein, and a creditor of said decedent, filed with the Register of Wills for the District of Columbia its duly authenticated claim against said estate, in the amount of \$2368.65. (App. p. 8.) On June 19, 1942, Albert W. Sanson, another appellant herein, of the City of Philadelphia, State of Pennsylvania, and a creditor of said decedent, filed with the Register of Wills for the District of Columbia his duly authenticated claim against said estate, in the amount of \$917.20. (App. p. 9.) These were the only two claims filed against decedent's estate in the District of Columbia. (App. pp. 5, 6, and 10.) Claims aggregating almost \$10,000.00, however, had been filed against the domiciliary estate in the State of New York. (App. p. 5.) On November 20, 1942, the aforesaid James W. Osgood, as administrator c.t.a. of decedent's estate in the State of New York, applied for ancillary letters of administration c.t.a. in the District of Columbia, and on that day such letters were granted unto him by the District

Court of the United States for the District of Columbia, Holding a Probate Court. (App. p. 2.) Thereafter, in due course, the real estate of decedent in the District of Columbia, was sold in order to pay debts. (App. p. 7.)

Appellee filed his First and Final Account of administration in the ancillary proceedings in the District of Columbia on May 6, 1944. (App. pp. 9 and 10.) In that account Appellee, after deducting all administration expenses, set the entire residue of the estate down for distribution to himself as administrator c.t.a. in the State of New York, and sought to transfer such residue from his hands as ancillary administrator c.t.a. in the District of Columbia to his hands as administrator c.t.a. in the State of New York. (App. pp. 9 and 10.) In said account Appellee completely ignored the claims of Appellants, whereupon Appellants duly filed their objections to said account. (App. pp. 10 and 11.) Said objections were predicated upon the right of Appellants to have their duly probated claims in the ancillary proceedings paid and satisfied out of the residue of funds remaining in the hands of the ancillary administrator c.t.a. (Appellee) and before any such residue should be transferred or distributed to the domiciliary administrator c.t.a. in the State of New York. Appellants prayed that said account of Appellee be rejected and that Appellee be ordered to pay Appellants' claims. (App. pp. 11 and 12.)

After hearing, the District Court of the United States for the District of Columbia, Holding a Probate Court, signed an Order wherein it sustained Appellants' objections to the aforesaid account in part, said Order being entered on July 6, 1944. (App. p. 12.) The Court below in said Order, however, authorized the Appellee to withdraw and abandon his said account, and authorized Appellee to give notice to all creditors of the decedent known to Appellee and who had not proved their claims as provided by law in the District of Columbia, to now come in and exhibit such claims or have them passed, and further authorized Ap-

without jurisdiction to entertain claims of creditors unless such claims are filed or prosecutions thereof commenced within one year after the death of the decedent.

IV.

In the process of ancillary administration of a decedent's estate in the District of Columbia the notice to known creditors to exhibit their claims or have them passed as required by Section 523 of Title 18 of the District of Columbia Code, 1940 Edition, must be complied with during the period within one year after the death of the decedent.

ARGUMENT.

I.

In the Process of Ancillary Administration of a Decedent's Estate in the District of Columbia the Claims of All Creditors Who Timely Present Their Claims Shall be Settled.

Ancillary administration was taken out by Appellee on the estate of Rose O. Brillhart, deceased, in the District of Columbia on November 20, 1942. (App. p. 2.) The said decedent died on August 16, 1941. (App. p. 9.) The Appellants were the only two creditors of said decedent to file their claims in the ancillary proceedings in the District of Columbia, and their claims aggregated \$3285.85,—all other creditors having filed their claims in the domiciliary proceedings in the State of New York (App. pp. 5, 6 and 10), such claims aggregating \$9950.42. The claims of Appellants were duly and timely filed in the ancillary proceedings in the District of Columbia on June 17, 1942 and on June 19, 1942, respectively, and well within one year after the death of said decedent. (App. pp. 8 and 9.) Although there were ample funds, namely, \$6682.00, in the hands of Appellee to pay Appellants' claims in said ancillary proceedings he did not do so. Appellee should be required to

pay said claims in full in said ancillary proceedings to Appellants, and this even though the personal estate of said decedent located in other states may not be sufficient for that purpose. *Duehay et al. v. Acacia Mut. Life Ins. Co. et al.*, 70 App. D. C. 245, 105 F. 2d 768.

II.

In the Process of Ancillary Administration of a Decedent's Estate in the District of Columbia the Claims of No Creditors Who Present Their Claims Therein Untimely Shall be Settled.

Appellee herein under no theory could be said to be acting as the representative of any creditors other than those who have timely and properly filed their claims in the ancillary proceedings, and this is true even though such representative may also be the domiciliary administrator, as he is here. So far as concerns assets within a jurisdiction the ancillary administrator there appointed is paramount to and independent of the administrator appointed at the domicile, although they both are the same person. *Duehay v. Acacia Mut. Life Ins. Co., supra*. In order to have his just claim settled in ancillary proceedings in the District of Columbia, the creditor is required to commence the prosecution of his claim in the Probate Court within one year after the death of the decedent. *Sec. 501, Title 18, D. C. Code, 1940 Ed., 32 Stat. 528, supra*. Appellants' claims, the prosecution of which were duly commenced in the Probate Court within one year after the death of decedent, were the only claims filed in the Probate Court, and, consequently, there were no other claims which could be recognized by Appellee. And at the time of the filing by Appellee of his First and Final Account on May 6, 1944, which was over two years and eight months after decedent's death, no claims other than Appellants' had been filed in the Probate Court. (App. p. 10.) It follows, therefore, that any claims filed by creditors in the ancillary proceedings subsequent

CONCLUSION.

Because Appellants duly complied with the laws of the District of Columbia in commencing the prosecution of their claims timely, said claims should be paid in full, after preferred claims have been settled, and before all other claims not timely prosecuted, are recognized. Therefore, the judgment of the Court below should be modified, its order herein appealed from should be set aside, and the case should be remanded with directions that Appellee pay Appellants' claims in full prior to recognizing any other claims, after the payment of preferred claims.

Respectfully submitted,

JOSEPH A. CANTREL,
Attorney for Appellants.

APPENDIX

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v.

JAMES W. OSGOOD, Ancillary Administrator, c.t.a.,
Estate of Rose O. Brillhart, deceased, Administration
No. 60924, *Appellee*.

**Appeal from the District Court of the United States
For the District of Columbia, Holding a Probate Court**

JOINT APPENDIX.

Be It Remembered, that in the District Court of the United States for the District of Columbia, holding a Probate Court, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the case

therein entitled "In re Estate of Rose O. Brillhart, deceased, Administration No. 60924, to wit:

Petition for Ancillary Letters of Administration, C.T.A.

Filed Nov. 20, 1942

* * * * *

1 3. That decedent left a last will and testament
dated May 9, 1938 * * * said will was admitted to
probate and record in the Surrogate's Court of Westches-
ter County, State of New York, on January 28, 1942; * * *
and thereupon the said James W. Osgood was appointed
and qualified as the administrator c.t.a. of said
2 estate on the 10th day of February, 1942 * * *

* * * * *

5 *Order Granting Ancillary Letters of Administration*
C.T.A.

* * * It is by the Court this 20th day of November, 1942,
Adjudged, Ordered and Decreed, that ancillary letters of
administration c.t.a., be and they hereby are issued to
James W. Osgood upon his giving an undertaking in the
penalty of \$1,000.00, conditioned for the faithful perform-
ance of the trust in him reposed, and provided further that
he files the power of attorney required of non-residents.

EDWARD C. EICHER

Chief Justice

* * * * *

6 *Affidavit of James W. Osgood*

Filed July 26, 1943

State of California, County of Santa Barbara, ss.

James W. Osgood, being first duly sworn, deposes and
says that he is a citizen of the United States and a resident
of the State of California, residing at 241 El Bosque Road,
Santa Barbara, California; that he is the duly appointed
and qualified administrator c.t.a. of the Estate of Rose O.
Brillhart, deceased, late a resident of Westchester County

in the State of New York, decedent's will having been admitted to probate and record in the Surrogate's Court of Westchester County, State of New York, and letters of administration with the will annexed having been granted by that Court to affiant; that affiant is also the duly appointed and qualified ancillary administrator c.t.a. in the District of Columbia under letters of administration granted by this Court.

That according to the best of affiant's knowledge, information and belief, said decedent's personal property and estate consists wholly and only of a cash balance of \$830.39 in affiant's hands as domiciliary administrator in the State of New York; that in addition to said personal property, decedent, at the time of her death, owned real estate worth about \$13000.00 as follows: (1) An undivided one-half interest in Lot 56 in Square 2208 in the District of Columbia, improved by dwelling known as 2725 Connecticut Avenue, Northwest, Washington, District of Columbia, said property being assessed for purposes of taxation at \$17,047.00, and decedent's undivided one-half interest being worth approximately \$8,000.00; (2) Two Hundred acres of unimproved land near Lexington, in the State of Virginia, believed to be worth about \$25 an acre, aggregating approximately \$5,000 in value.

7 That according to the best of affiant's knowledge, information and belief, the following is a correct statement of the claims filed by decedent's creditors:

Name and Address	Purpose	Amount
Jacob A. Pepe *** Harrison, New York	Funeral expenses	\$ 793.00
Dave Rosenthal *** Mamaroneck, New York	Vegetables ***	85.39
Anthony T. Kammerer *** Mamaroneck, New York	Furnace repairs ***	16.00
Samuel Bromberg *** Mamaroneck, New York	Meats ***	28.72
	Groceries ***	54.77
		83.49
Mervin Connor *** Mamaroneck, New York	Coal supplied ****	141.30
Harry Crown *** *** Mamaroneck, New York	Installing transformer in radio	5.50
Frank Sargent Bartlett, C. S. *** New York City	Professional services ***	1295.00

Name and Address	Purpose	Amount
Bloomington Bros. Inc. *** New York City	Balance due on account ***	2.30
Lord & Taylor *** New York City	Balance due on account ***	6.50
Sheffield Farms Co. Inc. *** White Plains, N. Y.	Dairy products	88.93
Arthur Chernay, Inc. *** New York City	Cleaning	.80
8 Ever-Ready Linen Supply *** *** New York City	Laundry services	6.50
Thomas E. Buhler *** Larchmont, New York	Insurance	42.30
Aylward Riding Academy *** New York City	Riding services	194.81
Coles Bros. Feed Co. Inc. *** White Plains, N. Y.	Hay and Oats ***	29.12
Joseph J. Halzer *** Mamaroneck, New York	Electrical appliances	2.00
Dr. Frederick Henry Amendola *** New York City	For Professional Services ***	150.00
New York Telephone Co. *** New Rochelle, New York	Telephone Service	60.68
Western Union *** Larchmont, New York	Telegrams, ***	4.37
The Dochtermann Van & Express Co. Inc. *** New York City	Moving expenses	63.75
Salvatore Ciraco, *** Mamaroneck, New York	For fuel	3.90
R. G. Brewer, Inc. *** Mamaroneck, New York	For lumber and coal	16.00
L. Ivimy Gwalter *** New York City	Christian Science ***	20.00
Ernest Tolve, *** Mamaroneck, New York	Contracting materials	45.50
Bliss Exterminator Co. *** New York City	Balance due	21.00
9 Cushman's Sons, Inc. *** White Plains, N. Y.	Baked goods ***	7.21
Westchester Lighting Co. *** Port Chester, N. Y.	Final electrical bill	32.62
Westchester Joint Water Works *** Mamaroneck, New York	Acct. No. 188	110.40
Hamy Newman *** New York City	Acct. No. 302	16.33
Wayne Poultry Farms, Inc. *** New York City	Dressmaking	21.69
Clifton H. Howell *** Grove Park, Roanoke, Va.	Poultry or eggs	3.63
W. H. Minter *** Pincastle, Virginia	For brokerage	146.55
Nettie E. Dwyer *** New York City		60.00
Mirza T. K. Alexander *** New York City	For salary and loans	1880.00
Sackett, Chapman, Brown & Cross, *** New York City	Loan	3955.62
Antonia Capisano *** Mamaroneck, New York	For legal services rendered	2368.65
	Salary as gardener	130.00

Name and Address	Purpose	Amount
Fred F. French Management Rent Co. Inc. *** New York City		92.23
Susie Coates *** New York City	Loan ***	316.00
Albert W. Samson *** Philadelphia, Pa.	Legal Services	917.20
	Total	\$13236.27

10 That of the aforesaid claims only the claim of Sackett, Chapman, Brown & Cross, for \$2368.65 and the claim of Albert W. Sanson for \$917.20 have been probated in the District of Columbia.

That in addition to the claims listed above, the following administration expenses are due and unpaid in connection with the domiciliary administration in the State of New York: Sackett, Chapman, Brown & Cross for services in administration of the Estate as allowed by the Surrogate—\$500.00; Max Schiffman, c/o Louis Fieldman, Esq., New York City, for legal services in connection with the administration of the Estate plus its disbursements—\$254.00; George D. Burchell, Esq., 126 Valley Stream Road, Larchmont, New York, Special Guardian's fee—\$50.00; Charles M. Baxter, Jr., Mamaroneck, New York, Special Guardian's fee—\$50.00.

That in addition to the aforesaid administration expenses, there will be additional administration expenses both in the State of New York and in the District of Columbia.

JAMES W. OSGOOD

Subscribed and Sworn to before me this 20th of July, 1943.

VIOLA WILKINS

Notary Public

Notary Public in and for the County of Santa Barbara, State of California.

My Commission expires May 10, 1944.

* * * * *

11

Report of Auditor

Filed Sept. 27, 1943

To the District Court of the United States

For the District of Columbia:

The Auditor, for report in the above entitled cause respectfully states, as follows:

1. The Court, on April 29, 1943, upon consideration of the petition of James W. Osgood "for authority to sell real estate to pay debts" * * * referred this cause to the Auditor (pursuant to the provisions of Section 146 of the Code of Law for the District of Columbia)

* * * * *

13 5. As will be observed, James C. Rogers, Esquire, who represented the petitioner at the hearing, gave evidence in support of the allegations of said petition, and submitted an affidavit by the petitioner, in which he sets forth in detail the assets of the decedent's estate, personal and real, and the debts and claims against the estate. Mr. Roger's statement to the Auditor was, in part, as follows:

Mr. Osgood is a resident of the State of California, and it was rather out of the question for him to attend before the Auditor in person. However, he has made an affidavit, the original of which I have, before a notary public, sworn to under date of July 20, 1943, in which he sets forth in detail and with great particularity the assets of this estate so far as known to him; and also the claims which have been filed against the estate. Only two of the claims have been probated in the District of Columbia, namely, the claim of Sackett, Chapman, Brown & Cross, for \$2368.65; and the claim of Albert W. Sanson, for \$917.20.

* * * * *

14 As shown by Mr. Osgood's affidavit, the total claims which have been asserted against the estate, both in the District of Columbia and in New York, amount

to \$13,236.27. In addition there are some administration expenses, both in New York, and there will be some administration costs here in the District of Columbia."

* * * * *

15 6. On September 1, 1943 (after the hearing), Mr. Rogers, * * * submitted to the Auditor a supplemental affidavit by the petitioner (filed herewith), reading as follows:

 "James W. Osgood, being first duly sworn, deposes and says that * * * this affidavit is made for the purpose of supplementing affiant's affidavit sworn to before Viola Wilkins

 * * * on the 20th day of July, 1943, wherein affiant set
16 forth * * * a statement of the claims filed by decedent's creditors, aggregating in all \$13,236.27; that of the claims set forth in the aforesaid affidavit the following claims are disputed by affiant and are deemed by affiant to be inadmissible as just claims against the decedent's estate, namely:

item 7	Frank Sargent Bartlett	
	11 East 68th St., New York City	\$1,295.00
item 17	Dr. Frederick Henry Amendola,	
	540 Park Ave., New York City	150.00
item 23	L. Irving Gwalter	
	551 Fifth Ave., New York City	20.00
		\$1,465.00

that all of the other items referred to in affiant's affidavit of July 20, 1943, aggregating \$11,771.27 in amount, are to the best of affiant's knowledge, information and belief just and valid claims against the decedent's estate; * * *

7. After due consideration of the evidence presented the Auditor finds and reports to the Court, as follows:

* * * * *

17 (e) That in order to pay said debts and claims, it is necessary to sell the undivided one-half interest of

the decedent in said Lot 56 in Square 2208, in the District of Columbia, * * *

* * * * *

18 *Copy of Probated Claim of Sackett, Chapman,
Brown & Cross*

Filed June 17, 1942

District Court of the United States for the
District of Columbia

Holding Probate Court

District of Columbia, To Wit:

Personally appeared Joseph A. Nickerson, agent and member of Sackett, Chapman, Brown & Cross, Esqs., of 154 Nassau Street, County, City and State of New York, who, being duly sworn or affirmed according to law, doth depose and say that the annexed account against Rose O. Brillhart is correctly copied from the books of original entry of said Sackett, Chapman, Brown & Cross; that the charges were made in said books at or about the time of their respective dates; that the said services for which the charges were made were actually made at the special instance and request of Rose O. Brillhart as charged; that the charges are correct; and the account just and true as stated; that there is now due and owing thereon the sum of \$2,368.65; that no part of said sum has ever been paid or in any manner settled or secured, and that there are no deductions or set-offs of any kind except such as are therein specified and credited.

\$2,368.65

JOSEPH A. NICKERSON

State of New York, County of New York

Subscribed and sworn to before me this 12th day of June, A.D., 1942.

JOHN S. COLLINS
Notary Public

* * * * *

48 *Copy of Probated Claim of Albert W. Sanson*

Filed June 19, 1942

* * * District Court of the United States for the
District of Columbia

Holding a Probate Court

District of Columbia, To Wit:

Personally appeared Albert W. Sanson, * * * Philadelphia, State of Pennsylvania, who, being duly sworn or affirmed according to law, doth depose and say that the annexed account against Rose O. Brillhart * * * is correct and true; * * * that there is now due and owing thereon the sum of \$917.20; that no part of said sum has ever been paid or in any manner settled or secured, and that there are no deductions or set-offs of any kind except such as are therein specified and credited.

\$917.20

ALBERT W. SANSON

* * * * *

56 *First and Final Account of James W. Osgood,
Ancillary Administrator, c.t.a*

Filed May 6, 1944

No. 60,924 —

Estate of Rose O. Brillhart, Deceased

Date of death August 16, 1941.

* * * * *

57 Residue down for distribution \$6,682.00

Residue distributable to James
W. Osgood, Administrator
c.t.a appointed by the Surro-
gate's Court of Westchester
County, State of New York,
for distribution under direc-
tion of that Court

\$6,682.00

\$6,682.00 \$6,682.00

Note: From the report of the Auditor, filed herein September 27, 1943, this estate appears to be insolvent. There are no creditors in the District of Columbia. All creditors except Albert W. Sanson, of Philadelphia, Pa., are residents of the State of New York, where decedent was domiciled at the time of her death. Only two claims have been probated in the District of Columbia, namely, Sackett, Chapman, Brown & Cross, of New York, N. Y., in the amount of \$2,368.65 and Albert W. Sanson, of Philadelphia, Pa., in the amount of \$917.20. In order that each creditor may receive his proper proportionate share in the estate, distribution of the entire residue in the hands of the ancillary administrator is made to the domiciliary administrator.

* * * * *

Objections to First and Final Account of James W. Osgood, Ancillary Administrator, c.t.a., by Sackett, Chapman, Brown & Cross

* * * * *

61 Now comes the law firm of Sackett, Chapman, Brown & Cross, * * * as one of the creditors who has filed and probated herein its claim against the above-entitled estate,—and objects and excepts to the First and Final Account of James W. Osgood, * * * upon the following grounds:

1. That said Ancillary Administrator, c.t.a., seeks to distribute unto himself as domiciliary administrator, c.t.a., in the State of New York, the entire residue of \$6,682.00 remaining in his hands as Ancillary Administrator, c.t.a., aforesaid, after the payment of the costs of the ancillary administration, and in so doing completely ignoring the probated claims filed by creditors in said ancillary proceedings.

2. This objector and exceptant duly filed its claim against the above-entitled estate in the ancillary proceedings herein, and the same was duly probated and entered of record. As such claimant this objector and exceptant is a

non-resident of the District of Columbia. The amount of its claim filed herein against said estate is \$2,368.65.

62 Only one other claim was filed in said ancillary proceedings herein, and that, too, by a non-resident of the District of Columbia, in the amount of \$917.20.

3. This objector and exceptant says that it is informed and believes that, under the laws of the District of Columbia, it is entitled to have its duly probated claim paid and satisfied out of the residue of funds remaining in the hands of the ancillary administrator, c.t.a., and before any such residue is transferred or distributed to the domiciliary administrator, c.t.a., and this objector and exceptor therefore prays that the Court reject the said account so filed by the ancillary administrator, c.t.a., and order said ancillary administrator, c.t.a., to pay the said claim of this exceptor.

SACKETT, CHAPMAN, BROWN & CROSS

By: Joseph A. Nickerson

* * * * *

Objections to First and Final Account of James W. Osgood, Ancillary Administrator, c.t.a., by Albert W. Sanson

* * * * *

65 Now comes Albert W. Sanson, of Philadelphia, State of Pennsylvania, as one of the creditors who has filed and probated herein his claim against the above-entitled estate, and objects and excepts to the First and Final Account of James W. Osgood * * * upon the following grounds:

1. That said Ancillary Administrator, c.t.a., seeks to distribute unto himself as domiciliary administrator, c.t.a., in the State of New York, the entire residue of \$6,682.00 remaining in his hands as Ancillary Administrator, c.t.a., aforesaid, after the payment of the costs of the said ancillary proceedings,—but in so doing completely ignoring the probated claims filed by creditors in said ancillary proceedings.

2. This objector and exceptor duly filed his claim against the above-entitled estate in the ancillary proceedings herein, and the same was duly probated and entered of record. As such claimant this objector and exceptor is a non-resident of the District of Columbia. The amount of his claim filed herein against said estate is \$917.20. He is informed and believes that only one other claim was filed in said ancillary proceedings herein, and that, too, by a non-resident of the District of Columbia, in the amount
66 of \$2,368.65.

3. This objector and exceptor says that he is informed and believes, under the laws of the District of Columbia, he is entitled to have his duly probated claim paid and satisfied out of the residue of funds remaining in the hands of the ancillary administrator, c.t.a., and before any such residue is transferred or distributed to the domiciliary administrator, c.t.a., and this objector and exceptor therefore prays that the Court reject the said account so filed by the ancillary administrator, c.t.a., and order him to pay the said claim of this exceptor.

ALBERT W. SANSON

* * * * *

68 *Order Sustaining Objections to Account in Part*

Upon consideration of the objections filed May 27, 1944 by Sackett, Chapman, Brown & Cross and by Albert W. Sanson to the First and Final Account of James W. Osgood, Ancillary Administrator, c.t.a. of the Estate of Rose O. Brillhart, Deceased, filed herein May 6, 1944, the parties having appeared by their counsel and presented the matter, and it appearing to the Court that claims of non-resident creditors are known to said James W. Osgood, Ancillary Administrator, c.t.a., as to which said administrator is required to give notice in writing to such creditors pursuant to the provisions of Sec. 18-523 D. C. Code, 1940 ed., it is by the Court this 6th day of July, 1944,

Ordered, that said James W. Osgood, Ancillary Administrator, c.t.a., of the Estate of Rose O. Brillhart, deceased, is hereby authorized to withdraw and to abandon the First and Final Account filed by him herein on the 6th day of May 1944; that the time for filing an account by said James W. Osgood as ancillary administrator, c.t.a., be and the same is hereby extended for a period of four months from the date of this order, provided that said James W. Osgood, as ancillary administrator, c.t.a. of said estate shall proceed forthwith to give the notice required by Section 18-523, D. C. Code, 1940 ed., to all creditors of the decedent known to him who have not proved their claims as required by Sec. 18-503, D. C. Code, 1940 ed.; and that said James W. Osgood as ancillary administrator, c.t.a., of said estate in the account to be filed by him shall show payment of all just claims against said decedent exhibit to him in the District of Columbia, or a just proportionate part thereof, according to the assets.

JAMES W. MORRIS

Justice

No objection as to form:

JOSEPH A. CANTREL

Attorney for Exceptors

* * * * *

69 *Notice of Appeal (Sackett, Chapman,
Brown & Cross)*

Notice is hereby given this fifth day of October, 1944, that Sackett, Chapman, Brown & Cross, as a creditor of the above estate and as objector to the first and final account of James W. Osgood, ancillary administrator, c.t.a., thereof, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the sixth day of July, 1944, in favor of said

ancillary administrator, c.t.a., in part, and against said Sackett, Chapman, Brown & Cross, in part.

JOSEPH A. CANTREL
Attorney for Appellant

JOSEPH A. CANTREL
729-15th St., N. W.,
Washington 5, D. C.,
METropolitan 5263.

* * * * *

70 *Notice of Appeal (Albert W. Sanson)*

Notice is hereby given this fifth day of October, 1944, that Albert W. Sanson, as a creditor of the above estate and as objector to the first and final account of James W. Osgood, ancillary administrator, c.t.a., thereof, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the sixth day of July, 1944, in favor of said ancillary administrator, c.t.a., in part, and against said Albert W. Sanson, in part.

JOSEPH A. CANTREL
Attorney for Appellant

JOSEPH A. CANTREL
729-15th St., N. W.,
Washington 5, D. C.,
METropolitan 5263.

* * * * *

BRIEF FOR APPELLEE

IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8897

SACKETT, CHAPMAN, BROWN & CROSS, and
ALBERT W. SANSON, *Appellants*,

v.

JAMES W. OSGOOD, Ancillary Administrator c.t.a.,
Estate of Rose O. Brillhart, deceased, Administration
No. 60924, Appellee.

Appeal from the District Court of the United States for the
District of Columbia, Holding a Probate Court.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED JAN 25 1945

Joseph W. Stewart

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Appeal from the District Court of the United States for the
District of Columbia, Holding a Probate Court.

BRIEF FOR APPELLEE.

PRELIMINARY STATEMENT.

The judgment from which the appeal in this proceeding was taken relates to the method of making distribution to the creditors of decedent. (Joint App., p. 12.) The estate is insolvent and there are no local creditors. (See affidavit

of James W. Osgood, Joint App., p. 2, and report of the Auditor, Joint App., p. 6.) In order that each creditor might receive his proportionate share in the estate, Appellee as ancillary administrator filed an account showing distribution of the residue to himself as domiciliary administrator in New York. (Joint App., p. 10.) However, the probate court directed the ancillary administrator to withdraw the account and to make distribution direct to creditors in accordance with its order of July 6, 1944. (Joint App., p. 12.)

Appellee is a party to this proceeding in his representative capacity as ancillary administrator. As such he has no interest other than to see that distribution is made strictly in accordance with the applicable law. An executor or administrator has no right of appeal from a decree of distribution. Appellee could not have taken an appeal from the judgment of the probate court. He is in effect merely a stakeholder for the creditors with a duty to distribute in accordance with the law as construed by the courts. Nevertheless, Appellee considers it appropriate to set forth briefly his views regarding the question presented by the appeal.

STATUTES INVOLVED.

In addition to the statutes set forth in the Brief for Appellants, the following section of the D. C. Code, 1940 ed., is deemed by Appellee to be relevant:

“Sec. 18-515 (29:205). Plea of limitations within discretion of executor or administrator.

It shall not be considered as the duty of an executor or administrator to avail himself of the act of limitations to bar what he supposes to be a just claim, but the same shall be left to his honesty and discretion. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, sec. 341.)”

SUMMARY OF ARGUMENT.

In ancillary administrations in the District of Columbia, Sec. 18-523 of the D. C. Code, 1940 ed., is applicable. It is not necessary to the consideration and the payment of a claim that it be exhibited to the ancillary executor or administrator within one year after the death of the decedent, because under Sec. 18-515 an executor or an administrator is not obliged to avail himself of any act of limitations to bar what he considers to be a just claim.

ARGUMENT.

I.

In an Ancillary Administration in the District of Columbia, Section 18-523 of the D. C. Code, 1940 ed., is applicable.

The statutes of the District of Columbia relating to the administration of the estates of decedents are equally applicable, at least so far as they are pertinent, to the administration of all estates, whether domiciliary or ancillary. *Duehay v. Acacia Mutual Life Ins. Co.*, 70 App. D. C. 245, 105 F. 2d 768.

Section 18-523 of the D. C. Code, 1940 ed., (set forth in Appellant's brief at p. 4) enjoins upon every executor or administrator the duty of paying all just claims against his decedent exhibited to him, or a just proportionate part thereof, according to the assets, and also the further duty of giving notice in writing to the creditor in respect of any claim known to the executor or administrator which has not been exhibited or passed requiring the claim to be either exhibited or passed within the time specified in that section.

Section 18-523 is one of several sections of the Code relating to the manner of proving and settling claims against the estates of decedents. Aside from these sections there are no provisions governing the procedure to be followed in ancillary administrations. Unless these sections are applicable to ancillary administrations the local probate court

would have merely the right to appoint an ancillary administrator or executor without having the authority to supervise the management of the estate, the settlement of accounts, and the disposition of assets. *Duehay v. Acacia Mutual Life Ins. Co., supra.*

At the hearing on the exceptions filed by Appellants to Appellee's account, the District Court, holding probate court, found as a fact that claims of non-resident creditors were known to Appellee as to which he was required to give notice pursuant to Sec. 18-523. (Joint App., p. 12.) Consequently, it was proper for the Court to direct Appellee to give the notice required by that section and then to file an account showing payment of all just claims duly exhibited, or a just proportionate part thereof according to the assets.

II.

In an ancillary administration in the District of Columbia it is not necessary to the consideration and the payment of a claim that it be exhibited to the ancillary executor or administrator within one year after the death of the decedent.

There is nothing in Sec. 18-523 of the D. C. Code, 1940 ed., or in any other section of the Code, which requires that the claim must be exhibited or that the notice referred to in Sec. 18-523 must be given within one year after the death of a non-resident decedent. In the instant case it was impossible for the ancillary administrator to give the notice required by Sec. 18-523 within one year after the decedent's death. The decedent died August 16, 1941. (Joint App., p. 9.) Ancillary administration was not granted until November 20, 1942. (Joint App., p. 2.)

It is true that Sec. 18-501 relating to the rights of creditors against the property in the District of Columbia of a non-resident decedent grants authority for the administration of such property under the direction of the probate

court, provided the prosecution of such claims is begun within one year after the death of the decedent. However, the special statute of limitations contained therein may be waived by the executor or administrator under authority of Sec. 18-515, D. C. Code, 1940 ed.

To construe Sec. 18-501 so as to allow the claims of Appellants to be paid in full from the assets of an insolvent estate such as this would be to grant to them an unfair and unjust preference over other creditors of the same class who exhibit their claims or have them passed within the time prescribed by Sec. 18-523.

CONCLUSION.

The order appealed from should be affirmed.

Respectfully submitted,

ARTHUR J. PHELAN,
JAMES C. ROGERS,
Attorneys for Appellee.